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FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

JUN 11 2008

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

Pre-MUR 456

SOURCE:

MUR 5955

DATE COMPLAINT FILED: November 27, 2007

DATE OF NOTIFICATION: December 5, 2007

LAST RESPONSE RECEIVED: March 20,
2008

DATE ACTIVATED: February 7, 2008

EXPIRATION OF SOL: May 9, 2012

COMPLAINANT:

Laurence A. Levy, General Counsel, Rudy Giuliani
Presidential Committee, Inc.

RESPONDENTS:

Dr. Jose Valdez
Steve Melody
Joan Melody
Mike Ramseier
Janie Ramseier
Rosario Chavez
WellPoint, Inc.
Rudy Giuliani Presidential Committee, Inc., and
John Gross, in his official capacity as treasurer

RELEVANT STATUTES
AND REGULATIONS:

2 U.S.C. § 441f
2 U.S.C. § 441a(a)(1)(A)
11 C.F.R. § 110.4(b)(i)
11 C.F.R. § 110.4(b)(ii)

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11 C.F.R. § 110.4(b)(iii)

11 C.F.R. § 110.1(b)(1)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

the Rudy Giuliani Presidential Committee, Inc. ("RGPC")

filed a complaint, asserting that Dr. Jose Valdez, former WellPoint Senior Vice President for Health Care, reimbursed \$11,500 in contributions to RGPC made in the names of WellPoint employees Michael Ramseier, Steve Melody and Rosario Chavez and spouses, Janie Ramseier and Joan Melody (collectively "conduit respondents"), apparently with Valdez's personal funds. RGPC reported they received the contributions in question on May 9, 2007.

In their joint response, the conduit respondents each confirmed they were reimbursed for their contributions. They state they did not know they were acting illegally and that Valdez assured them it was permissible to have their names used in making contributions. Valdez's response admits reimbursing only three unnamed donors, and does not address the source of the funds used, his knowledge of the legality of his actions, or any other circumstances surrounding the reimbursements.

As discussed in more detail below, we recommend the Commission find reason to believe that Dr. Jose Valdez knowingly and willfully violated 2 U.S.C. §§ 441f and 441(a)(1) by making contributions in the names of others and making excessive contributions to RGPC. We further recommend the Commission take no action at this time as to Michael Ramseier, Janie Ramseier, Steve Melody, Joan Melody, Rosario Chavez, WellPoint and RGPC.

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1 **II. FACTUAL SUMMARY**

2 WellPoint learned that Dr. Valdez may have reimbursed contributions through an
3 uninvolved employee who informed the company that he had heard that Valdez solicited certain
4 other employees for political contributions. WellPoint letter at 1. WellPoint interviewed these
5 other employees, WellPoint Vice Presidents of Health Services, Michael Ramseier and Steve
6 Melody and Senior Network Analyst, Rosario Chavez. *Id.*

7 In the interviews, each of the employees stated that they and Valdez had attended the
8 Latino Coalition Small Business Conference in Washington, D.C. on May 1, 2007, on behalf of
9 WellPoint, a corporate sponsor. *Id.* at 1-2. Rudy Giuliani was a featured speaker at the
10 conference. *Id.* at 2. Following the conference, there was an unrelated RGPC fundraiser. *Id.*

11 According to the employees, before arriving in Washington, D.C., Valdez asked
12 Ramseier, Melody and Chavez, all subordinate employees reporting directly or indirectly to him,
13 if they would like to attend a closed meeting with Giuliani and have their pictures taken with
14 him. *Id.* When they arrived at the RGPC fundraiser, however, Valdez informed the employees
15 that they were required to contribute \$2,300 in order to attend the event. *Id.* Ramseier told
16 Valdez that he was uncomfortable with the request, but contributed \$4,600 on behalf of himself
17 and his wife Janie anyway. *Id.* Steve Melody stated he also had reservations about the
18 arrangement, but also contributed \$4,600 on behalf of himself and his wife Joan.¹ *Id.* Rosario
19 Chavez, who was not a member of management, said she contributed \$2,300 as requested based
20 on the promise of reimbursement. *Id.* The conduits' joint response (at 1-2) states more strongly
21 that Valdez "instructed" the employees to contribute on behalf of themselves and spouses, and

¹ Steve Melody's wife's name is Joan, not Desiree as stated in Pre-MUR 456 documents and the complaint. Employee Response at 1.

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1 that all three initially refused and protested that they did not want to contribute, but did so after
2 Valdez said he would personally reimburse them and it was permissible to have their names used
3 to make the contributions.

4 Ramseyer and Melody advised WellPoint that both were reimbursed by personal checks
5 from Valdez at the fundraiser, delivered by Dr. Pedran Salimpour, reportedly a friend of Valdez.
6 WellPoint letter at 2. Chavez said she received \$2,300 in cash in an envelope delivered by
7 Kenny Deng, another WellPoint employee.² *Id.* When interviewed, Deng stated he did not
8 remember giving Chavez the envelope, but said he must have done so and that he didn't know
9 what was in it. *Id.*

10 WellPoint discharged Valdez as a result of the reimbursement scheme. *Id.* According to
11 counsel, WellPoint gave "final written warnings" to Ramseyer and Melody, and a verbal warning
12 to Chavez, because of their involvement in the reimbursement scheme.³ To ensure corporate
13 funds were not used for the reimbursements, WellPoint searched company records, including
14 expense reports, impact award payments (spot bonuses that Valdez approved), other expense
15 submissions, Valdez's expense reports from 2004 through present, and WellPoint programs that
16 might have reimbursed the contributions. WellPoint letter at 2. WellPoint maintains it found
17 nothing to suggest corporate funds were used to reimburse any political contributions or
18 expenses. *Id.* On October 25, 2007, _____

² Kenny Deng reportedly attempted to contribute, but had a problem with his credit card and therefore did not make a contribution. WellPoint letter at 1.

³ Deng received a "final written warning" for his involvement in the reimbursement scheme. See footnote 2, *supra*. Counsel for WellPoint provided its "Standard of Ethical Business Conduct" manual pages on political activity and contributions, which governs all WellPoint employees. The relevant pages do not specifically address contributions in the name of another, but state that an employee cannot ask another WellPoint associate to assist with individual volunteer political fundraising or other political activity. *Standards of Ethical Business Conduct*, WellPoint, March 2007, pages 15-16. The manual also provides an ethics and compliance helpline toll free number for employees.

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WellPoint sent a letter to RGPC, informing it of the reimbursed contributions and asking it to take appropriate action to remedy the situation. *Id.*

RGPC states that it immediately commenced an investigation following its receipt of WellPoint's letter. The investigation revealed that Valdez was an authorized fundraising agent of RGPC and host of the May 1, 2007 RGPC fundraiser in Washington, D.C. RGPC letter at 2. According to counsel, as an authorized fundraising agent, Valdez was required by RGPC to acknowledge in writing that he reviewed materials the campaign provided on campaign finance law, which included a section that made clear that contributions must be made from personal funds. Valdez collected a total of 14 contributions for the event, two from himself and his wife, the five conduit respondent contributions at issue, and seven others.⁴ RGPC letter at 2. RGPC asserts that it was unaware that Valdez may have violated the Act before it received the WellPoint letter. *Id.*

RGPC states that it remedied the situation on October 30, 2007 by 1) revoking Valdez's authority as fundraiser for RGPC in a letter, 2) refunding the \$4,600 in contributions made by Valdez and his wife, 3) refunding the \$11,500 in contributions at issue to the named donors, and 4) contacting the seven remaining donors that contributed through Valdez to investigate whether their contributions were made freely and whether they were reimbursed by Valdez. *Id.*

RGPC filed a complaint on November 21, 2007, in which it alleges the same information as contained in its previous letter. MUR 5955 Complaint. Additionally, the complaint states that the seven remaining donors it contacted that had contributed through Valdez to the May 1, 2007

⁴ Valdez did not collect any other contributions for RGPC besides the 14 for the May 1, 2007 RGPC fundraiser in Washington, D.C.

1 RGPC fundraiser all confirmed to RGPC that their contributions were made willingly and free of
2 coercion, and were not reimbursed by Valdez or any other party. *Id.*

3 In his response to the complaint, Valdez states that \$11,500 was contributed to RGPC in
4 the name of five separate unnamed donors, including Valdez and his wife.⁵ Valdez response at
5 1. Valdez admits reimbursing the "other donors for their contributions." *Id.* He states that the
6 contributions were not made with any intent to corruptly influence the candidate nor did he seek
7 any special influence or favors from Giuliani or RGPC. *Id.* Valdez requests conciliation, stating
8 he is willing to cooperate with the Commission and hopes to resolve this matter expeditiously.

9 **III. LEGAL ANALYSIS**

10 **A. Dr. Jose Valdez**

11 The Act provides that "no person shall make a contribution in the name of another
12 person." 2 U.S.C. § 441f. The prohibition extends to knowingly helping or assisting any person
13 in making a contribution in the name of another. 11 C.F.R. § 110.4(b)(iii). Further, the Act
14 limits the amount a person can contribute to a candidate for federal office and the candidate's
15 authorized political committee to \$2,300 per election. 2 U.S.C. § 441a(a)(1)(A), 11 C.F.R.
16 § 110.1(b)(1).

17 Based on the available information, it appears that Valdez reimbursed five conduit
18 respondents for contributions to RGPC in violation of 2 U.S.C. § 441f. In addition, since Valdez
19 himself contributed \$2,300 to RGPC at the May 1, 2007 fundraiser, when that contribution is

⁵ According to the other information discussed above, \$11,500 was contributed to RGPC in the name of five separate donors, not including the \$4,600 contributed by Valdez and his wife. We do not know if the statement in Valdez's response was an inadvertent misstatement.

1 aggregated with the amounts he contributed in the names of others, he exceeded the Act's limit
2 by as much as \$11,500, in violation of 2 U.S.C. § 441a(a)(1)(A).⁶

3 Moreover, it appears that Valdez' conduct may have been knowing and willful. The
4 knowing and willful standard requires knowledge that one is violating the law. See *Federal*
5 *Election Commission v. John A. Dramesi for Congress Committee*, 640 F. Supp. 985, 987
6 (D. N.J. 1986). A knowing and willful violation may be established "by proof that the defendant
7 acted deliberately and with knowledge that the representation was false." *United States v.*
8 *Hopkins*, 916 F.2d 207, 214 (5th Cir. 1990). An inference of a knowing and willful act may be
9 drawn "from the defendant's elaborate scheme for disguising" his or her actions. *Id.* at 214-215.

10 In this matter, there is information that suggests that Valdez knew that his conduct was
11 prohibited by law. It appears that Valdez knew that an individual donor could contribute no
12 more than \$2,300 to RGPC for the 2007 primary election. Valdez was an authorized fundraiser
13 and host for the RGPC May 1, 2007 event for which he collected 14 contributions, including
14 those by himself and his wife, each in the maximum amount of \$2,300. Moreover, as an
15 authorized fundraiser for RGPC, Valdez was required to sign a statement that he read the
16 campaign finance materials provided by RGPC, which included information that contributions
17 must be made from personal funds. Valdez was also an experienced political contributor, having
18 given \$9,940 to federal candidates and PACs since 2000, all within permissible levels. Based on
19 these facts, it appears that Valdez intended to circumvent the individual contribution limits by
20 using his subordinates to make excessive contributions to RGPC. Accordingly, we recommend

⁶ We are not treating the \$2,300 contributed by Valdez's wife, who had a separate contribution limit, as a reimbursed or excessive contribution from Valdez.

that the Commission find reason to believe that Dr. Jose Valdez knowingly and willfully violated 2 U.S.C. §§ 441f and 441a(a).⁷

B. The Conduits

The Act states, "no person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution...." 2 U.S.C. § 441f. In their joint response, the conduit respondents contend they did not "permit" their names to be used, but were required by their superior to engage in activities with which they disagreed. Conduit respondents' response at 2. Although the employees claim that their contributions were not voluntary because they were asked to contribute by their supervisor, by accepting reimbursements from Valdez for making their respective contributions to RGPC, the conduit respondents knowingly permitted Valdez to use their names to make those contributions.

Recently, in MUR 5871 (Noe), the Commission took no action at this time at the reason to believe stage as to Mr. Noe's subordinates and their spouses who may have felt pressured to participate in Mr. Noe's reimbursement scheme. *See also* MUR 5849 (Bank of America) (Commission rejected a recommendation to find reason to believe that conduit employees violated 2 U.S.C. § 441f.)⁸ Here, as in MURs 5871 and 5849, the three employee conduit respondents, two of whom held management positions, were subordinate to Valdez and directly or indirectly under his supervision. The conduit respondents also assert that they did not know

⁷ In a number of recent matters involving Section 441f violations, the Commission has found reason to believe or probable cause to believe that the conduct of the individuals reimbursing the contributors was knowing and willful. *See, e.g.*, MUR 5903 (PBS&J Corp.), MUR 5849 (Bank of America), MUR 5818 (Fieger, Kenney & Johnson), MUR 5666 (MZM, Inc.), MUR 5504 (Karoly Law Offices), MUR 5366 (Edwards for Pres.), and MUR 5092 (Michael Lazaroff).

⁸ *But see* MUR 5948 (Critical Health Systems) (Commission found reason to believe physician conduits violated the Act where they permitted their names to be used to make contributions from their employer because there was no single facilitator coordinating the reimbursements and all of the physicians were equal participants in the scheme).

1 that permitting their names to be used to make contributions was potentially illegal, and that
2 Valdez told them it was permissible. Conduit respondents' response at 2. According to FEC
3 disclosure records, none of the alleged conduit respondents had ever made any previous
4 contributions to a federal candidate. Moreover, the conduit respondents state that they
5 cooperated fully with the Wellpoint investigation, were instrumental in communicating the facts
6 to RGPC, and agree to cooperate with the Commission. *Id.* Therefore, we recommend that the
7 Commission take no action at this time as to Michael Ramseier, Janie Ramseier, Steve Melody,
8 Joan Melody, and Rosario Chavez.⁹

9 **C. WellPoint**

10 Based on the available information, it does not appear that Valdez used WellPoint's
11 corporate funds to reimburse the conduit respondents or that WellPoint had any other role in the
12 reimbursement scheme. According to the conduit respondents, two of them were reimbursed by
13 Valdez's personal checks. We do not know the source of the cash reimbursement to Chavez,
14 although WellPoint could not trace it to corporate funds. WellPoint maintains that it did not
15 know about the alleged reimbursement scheme until later informed of it. Once learning of it,
16 WellPoint conducted an investigation, discharged Valdez, disciplined the employee conduits,
17 and contacted RGPC . The Commission has previously declined to take
18 action against similar Respondents in past matters involving contributions in the name of
19 another. See MUR 5092 (Lazaroff) (Commission took no action as to Lazaroff's law firm
20 because the firm cooperated, firm funds were not used)
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⁹ If we do not learn any information materially contradicting the conduit respondents' assertions, we anticipate recommending in the last dispositive report or memorandum that the Commission take no action other than to send letters of admonishment and close the file with respect to them.

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1 _____ In the course of our investigation of Valdez's
2 activities, if we learn that WellPoint had any involvement in the alleged misconduct, we will
3 make an appropriate recommendation. Accordingly, we recommend the Commission take no
4 action at this time as to WellPoint.

5 **D. Rudy Giuliani Presidential Campaign**

6 The Act makes it unlawful for any candidate, political committee, or other person to
7 knowingly accept or receive a contribution in the name of another. 2 U.S.C. § 441f. The Act
8 also prohibits any candidate or political committee from knowingly accepting any contribution in
9 violation of the contribution limits set forth in section 441a. 2 U.S.C. § 441a(f). Although
10 RGPC accepted the contributions made and collected by Valdez, RGPC has represented that it
11 was unaware of any possible wrongdoing in connection with the contributions prior to receiving
12 WellPoint's October 25, 2007 letter, and we have no information to the contrary. Within a few
13 days of learning of the alleged scheme, RGPC terminated Valdez as an authorized fundraiser,
14 returned the contributions of Valdez, his wife and the alleged conduits, contacted other donors
15 who contributed through Valdez, and notified the Commission. See 11 C.F.R. § 103.3(b)(2) (if
16 treasurer later learns a contribution it received is illegal based on new evidence not available at
17 the time of receipt, the treasurer shall refund the contribution within thirty days of the date on
18 which the illegality is discovered). As with WellPoint, if we learn during our investigation of
19 Valdez that RGPC had any involvement in the alleged misconduct, we will make an appropriate
20 recommendation. Accordingly, we recommend the Commission take no action at this time as to
21 RGPC.

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13 [redacted]¹⁰ Accordingly, we recommend that the Commission authorize an investigation,
14 including the use of compulsory process.

15
16 **V. RECOMMENDATIONS**
17

- 18 1. Open a new MUR with respect to Pre-MUR 456 and merge the new MUR into
19 MUR 5955.
20
21 2. Find reason to believe that Dr. Jose Valdez knowingly and willfully violated
22 2 U.S.C. §§ 441f and 441a(a).
23
24 3. Take no action at this time with respect to Mike Ramseier, Janie Ramseier,
25 Steve Melody, Joan Melody, Rosario Chavez, WellPoint, Inc. and Rudy Giuliani
26 Presidential Committee, Inc. and John Gross, in his official capacity as treasurer.

¹⁰ The violations in this matter occurred after the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), which imposed a new minimum civil penalty equal to three hundred percent (300%) of the amount in violation and a new maximum civil penalty equal to one thousand percent (1000%) of the amount in violation in cases where the Commission believes a knowing and willful violation of 2 U.S.C. § 441f has been committed. *See* 2 U.S.C. § 437g(a)(5)(B).

4. Approve the attached Factual and Legal Analysis.

5. Authorize the use of compulsory process.

6. Approve the appropriate letter.

Thomasenia P. Duncan
General Counsel

6-10-08
Date

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